Department of L. L. B
Lahore lead university
Course title : islamic jurisprudence
Topic
Marriage, khula , Divorce, iddat of islamic personal law _1
Submitted by submitted to

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Semester 5th

Q#1 :Marriage , khula, divorce, iddat of islamic personal law?

➡Marriage:

1.Introduction
In Islamic Law, marriage (Nikah) is a legal civil contract between a man and a woman. Unlike a purely religious sacrament, it is a formal agreement that legalizes companionship and procreation while establishing specific legal rights and obligations for both spouses.

2. Quranic Perspective
The Holy Quran emphasizes that marriage is a source of peace, love, and protection.

The Purpose of Tranquility:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُم مِّنْ أَنفُسِكُمْ أَزْوَاجًا لِّتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُم مَّوَدَّةً وَرَحْمَةً
(Surah Ar-Rum: 21)
Translation: "And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts)."

The Metaphor of Protection:

هُنَّ لِبَاسٌ لَّكُمْ وَأَنتُمْ لِبَاسٌ لَّهُنَّ
(Surah Al-Baqarah: 187)
Translation: "They are your garments and ye are their garments."

3. Prophetic Tradition (Hadith)
The Prophet Muhammad (PBUH) strongly encouraged marriage as a means of maintaining moral character.

Nikah as a Sunnah:

النِّكَاحُ مِنْ سُنَّتِي فَمَنْ لَمْ يَعْمَلْ بِسُنَّتِي فَلَيْسَ مِنِّي
Translation: "Marriage is part of my sunnah, and whoever does not follow my sunnah has nothing to do with me." (Sunan Ibn Majah)

Guidance for Youth:

يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ

Translation: "O young men, those among you who can afford it should marry, for it restrains the eyes and preserves one's chastity." (Sahih Bukhari)

4. Essential Legal Requirements
For a marriage to be valid (Sahih) under Islamic Personal Law, the following conditions must be satisfied:

Ijab-o-Qubul (Proposal and Acceptance): A clear offer made by one party and accepted by the other in a single sitting.

Capacity: Both parties must be of sound mind and have reached the age of puberty/maturity.

Free Consent: The marriage must be entered into voluntarily without any coercion or duress.

Witnesses: The presence of two sane and adult witnesses is mandatory to attest to the contract.

Mahr (Dower): A mandatory financial gift or property settled by the husband upon the wife as a mark of respect and security.

5. Classification of Marriage
Islamic law categorizes the legal status of marriage into three types:

Sahih (Valid): All legal requirements are met; the marriage is fully binding.

Batil (Void): A marriage that is unlawful from the start (e.g., marrying within prohibited degrees of kinship).

Fasid (Irregular): A marriage with a temporary or fixable defect (e.g., marriage without witnesses).

6. Conclusion
Marriage in Islam is a comprehensive institution that balances spiritual, social, and legal needs. By treating it as a contract, Islamic Personal Law ensures that the rights of both the husband and wife are protected, providing a stable foundation for the family and society at large.

➡Khula

in Islamic jurisprudence, Khula is the right of a woman to seek a divorce from her husband by returning the dower (Mahr) or providing some other form of compensation. It is a process that allows a woman to exit a marriage when she feels she can no longer fulfill the marital obligations set by Allah.

1. Quranic Basis for Khula

The primary authority for Khula is found in Surah Al-Baqarah. The Quran establishes that if a couple cannot maintain a harmonious relationship, they may separate honorably.

The Arabic Verse:

وَلَا يَحِلُّ لَكُمْ أَن تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَن يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ ۖ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ
— (سورة البقرة، 2:229)

English Translation:
"...And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself."

2. Evidence from Hadith
The most famous historical instance of Khula occurred during the time of Prophet Muhammad (PBUH) involving the wife of Thabit ibn Qays.

The Arabic Hadith:

جَاءَتِ امْرَأَةُ ثَابِتِ بْنِ قَيْسِ بْنِ شَمَّاسٍ إِلَى النَّبِيِّ صلى الله عليه وسلم فَقَالَتْ يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتِبُ عَلَيْهِ فِي خُلُقٍ وَلاَ دِينٍ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الإِسْلاَمِ. فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم " أَتَرُدِّينَ عَلَيْهِ حَدِيقَتَهُ ". قَالَتْ نَعَمْ. قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم " اقْبَلِ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً "
— (صحيح البخاري، 5273)

English Translation:
The wife of Thabit bin Qays came to the Prophet (PBUH) and said, "O Allah's Messenger! I do not blame Thabit for defects in his character or his religion, but I, being a Muslim, dislike to behave in an un-Islamic manner." On that, Allah's Messenger (PBUH) said to her, "Will you give back the garden which he has given you as Mahr?" She said, "Yes." Then the Prophet (PBUH) said to Thabit, "Accept your garden, and divorce her at once."

3. Key Legal Requirements
To complete the process of Khula, certain conditions must generally be met:

Mutual Consent or Judicial Decree: While Khula is ideally done with the husband's consent, many modern legal systems allow a Judge (Qazi) to grant it if the husband refuses.

Compensation: The wife usually returns the Mahr (dower). Scholars agree that the compensation should not exceed the value of what the husband originally gave her.

The Iddah (Waiting Period): After Khula, the woman must observe a waiting period. According to the Sunnah, the Iddah for Khula is typically one menstrual cycle to ensure she is not pregnant.

Conclusion
Khula serves as a vital legal "exit route" for women in Islam, ensuring that marriage remains a union of choice and psychological well-being. It balances the husband's right to Talaq by giving the wife a corresponding path to dissolve the marriage through the return of financial assets.

➡Divorce

1. Introduction
In Islam, marriage is a sacred contract (Nikah). While the preservation of family is highly valued, Islam recognizes that some marriages may become unsustainable. Divorce is permitted as a last resort when reconciliation fails. However, it is famously noted in Islamic tradition as the "most disliked of permissible things."

2. Quranic Foundation of Divorce
The Quran provides clear guidelines on how divorce should be conducted—with fairness, kindness, and respect for the rights of both parties.

A. The Command for Kindness
Even when separating, Allah commands men to treat women with dignity rather than spite.

Arabic:

فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ

Translation (Surah Al-Baqarah, 2:229):

"...either keep [her] in an acceptable manner or release [her] with good treatment."

B. The Waiting Period (Iddah)
To ensure there is no pregnancy and to allow a "cooling off" period for potential reconciliation, the Quran mandates a waiting period.

Arabic:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

Translation (Surah Al-Baqarah, 2:228):

"Divorced women remain in waiting for three periods..."

3. Prophetic Traditions (Hadith)
The Prophet Muhammad (ﷺ) emphasized that while divorce is legal, it should not be taken lightly.

On the Gravity of Divorce:

Arabic: أَبْغَضُ الْحَلاَلِ إِلَى اللَّهِ تَعَالَى الطَّلاَقُ
English: "The most hated of permissible things to Allah is divorce." (Sunan Abi Dawud)

On the Rights of Women (Khula):
The Prophet (ﷺ) also allowed women to seek divorce if they were unhappy. When the wife of Thabit ibn Qays came to him seeking a separation, he instructed her to return her dowry (a garden) and told the husband:
Arabic: اقْبَلِ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً
English: "Accept the garden and divorce her once." (Sahih Bukhari)

4. The Procedure of Reconciliation
The Quran encourages mediation before finalizing a divorce to save the family unit.

Arabic:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا

Translation (Surah An-Nisa, 4:35):

"And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them."

Conclusion
Islamic Law (Sharia) seeks to balance the sanctity of marriage with the necessity of human happiness. It provides a structured exit strategy that protects the financial rights of the woman (through the Mahr and maintenance) and the lineage of children, ensuring that even the end of a marriage is handled with "Ihsan" (excellence/kindness).

➡iddat

1. Definition of Iddat
Iddat (Arabic: عدة) refers to the period of waiting that a Muslim woman must observe following the dissolution of her marriage, whether due to the death of her husband or divorce. During this time, she is not permitted to marry another man.

2. Scriptural Basis from the Holy Quran
The Quran specifies different periods for Iddat based on the circumstances of the separation.

A. Iddat for a Divorced Woman
For women who are divorced and still have a menstrual cycle:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ
(Al-Baqarah, 2:228)

Translation: "Divorced women remain in waiting for three periods..."

B. Iddat for a Widow (Death of Husband)
For a woman whose husband passes away:

وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا
(Al-Baqarah, 2:234)

Translation: "And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days."

C. Iddat for Pregnant Women
Regardless of whether it is divorce or death, the period ends upon delivery:

وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ
(Al-Talaq, 65:4)

Translation: "And for those who are pregnant, their term is until they give birth."

3. Supporting Hadith
The Sunnah of Prophet Muhammad (PBUH) further clarifies the rules of Iddat, particularly regarding mourning (Hidad).

Narrated by Umm Habiba and Zainab bint Jahsh (RA):
The Messenger of Allah (PBUH) said:

"It is not lawful for a woman who believes in Allah and the Last Day to mourn for a dead person for more than three nights, except for her husband, for whom she should mourn for four months and ten days." > (Sahih Bukhari & Muslim)

4.Wisdom and Purpose of Iddat
The Islamic scholars have highlighted several reasons for the prescription of Iddat:

Certainty of Paternity (Istibra al-Rahm): The primary reason is to ensure that the woman is not pregnant, thereby avoiding any confusion regarding the lineage of a future child.

A Period for Reconciliation: In the case of a revocable divorce (Talaq Raj'i), it provides a "cooling-off" period where the couple can rethink their decision and potentially reconcile.

Mourning for the Deceased: In the case of a husband's death, it serves as a mark of respect for the marriage bond and allows the widow a period to grieve.

Protection of Rights: It ensures the woman's right to maintenance (housing and food) from the husband's estate or the former husband during the period.

5. Rules During Iddat
Marriage Prohibition: A woman cannot contract a new marriage during this period.

Residence: Generally, the woman should remain in the house she lived in at the time of the separation/death, though modern scholars allow exceptions for work or emergencies.

Hidad (Mourning): For widows, this involves abstaining from beautification (perfume, jewelry, or vibrant clothing) during the four months and ten days.